

Reportable: YES/NO

Circulate to Judges: YES/NO

Circulate to Magistrates: YES/NO

Circulate to Regional Magistrates: YES/NO



IN THE HIGH COURT OF SOUTH AFRICA

(NORTH-WEST DIVISION, MAHIKENG)

CASE NO.: CA 34/2023

REGIONAL COURT CASE NO.: RC/117/2019

IN THE CRIMINAL APPEAL OF:

SIPHIWE PAPA DLAMINI

Appellant

and

THE STATE

Respondent

JUDGMENT

CORAM: MORRIS AJ et LAUBSCHER AJ

RELEVANT BACKGROUND

- 1 This is an appeal against a conviction of rape and kidnapping and a sentence of 20-years imprisonment imposed by the court *a quo* on the Appellant.
- 2 According to the charge sheet the Appellant was charged with the following: That the Appellant, upon or about 2 February 2019 and at or

near Ikageng in the Regional Division of North West, unlawfully and intentionally deprive P [REDACTED] T [REDACTED] of her freedom of movement and intentionally commit an act of sexual penetration with P [REDACTED] T [REDACTED], a female person (26 years) by inserting his penis into her vagina without the consent of the said complainant. The charge sheet stated that the Appellant is charged with one count of rape and one count of kidnapping, read with sections 1, 2, 50, 56(1), 56A, 57, 58, 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amended Act, Act 32 of 2007 as amended, further read with sections 94, 256 and 261 of the Criminal Procedure Act, Act 51 of 1977 and also further read with sections 51(1) or 51(2)(b) and schedule 2 of the Criminal Law Amendment Act, Act 105 of 1997 as amended and section 120 of the Children's Act, Act 38 of 2005.

- 3 The Appellant approaches this court of appeal on the following grounds as set out in his notice of appeal:

Ad Conviction

- 3.1 That the trial court misdirected itself by finding that the state has proved its case beyond reasonable doubt.
- 3.2 That the trial court ignored contradictions in the evidence of the state witnesses, which were material.
- 3.3 That the trial court asked questions during the States case which were not for clarity but were the trial court overstepping or descending.

Ad Sentence

- 3.4 The trial court misdirected itself by imposing a sentence of 20-years imprisonment.
 - 3.5 The trial court erred in not finding that there are substantial and compelling circumstances which warranted deviation from imposing the minimum sentence.
 - 3.6 The trial court over-emphasised the seriousness of the offence as well as the prevalence of the offence and paid lip service to the personal circumstances of the Appellant.
- 4 As referred to above, the Appellant was charged with kidnapping and raping the complainant on 2 February 2019. The Appellant pleaded not guilty and subsequent to the conducting of trial the court *a quo* found the Appellant guilty on both counts and as charged.
- 5 For the purposes of sentencing the following facts were placed before the court *a quo*:
- 5.1 The Appellant is 25 years old.
 - 5.2 His highest qualification is a matric certificate and that he was arrested whilst he was "*busy with arrangements to study further*".
 - 5.3 He was employed as a general worker under the extended public workers program.
 - 5.4 He has one minor child and is not married.
 - 5.5 He is of good health and has no chronic illnesses.
 - 5.6 That there were no physical injuries inflicted on the complainant and the only issue the complainant will have to deal with going forward are emotional scars.

5.7 That the Appellant was already serving a sentence at the time of the trial, and it was requested that a suitable sentence for the matter run concurrently with the sentence the Appellant was serving at the time of being found guilty and sentenced in this matter. The Appellant had several previous convictions which were disclosed to the trial court during the sentencing phase of the trial.¹

¹ The following is list of the Appellant's previous convictions: In February 2010, he was found guilty of housebreaking with the intent to steal. He was sentenced to 12 months imprisonment, which was wholly suspended for 5 years. In August 2010, he was found guilty of possession of presumably stolen property. He was sentenced to 7 years imprisonment, which was suspended for 5 years on the condition that, during the suspension, he is not convicted of the offence of which dishonesty is an element. Additionally, he was declared unfit to possess firearm and ammunition, in terms of section 103(A) of Act 60 Of 2000. In 2012, he was found guilty of assault with intent to do grievous bodily harm. He was sentenced to 5 years imprisonment in terms of section 276(1)(1)(l) of Act 51 of 1977. Additionally, and again, he was declared unfit to possess firearm in terms of section 103 of Act 60 of 2000. In 2013, he was found guilty of possession of a dangerous weapon. He was sentenced to 18 months imprisonment, which was wholly suspended for 3 years, or a fine of R1800. The SAPS 69 criminal record report lists a further offence which the State did not mention to the Court *a quo*. In terms thereof, the Appellant was found guilty of committing attempted murder on 6 September 2010. He was sentenced to 5 years imprisonment, which was suspended for 5 years on condition that, during the suspension, he is not convicted of an offence of which violence is an element.

- 6 The State made submissions to the court *a quo* in response to the Appellant's submissions and in aggravation of sentence. The submissions were that:
- 6.1 The offence is a serious offence, and subject to the minimum sentencing legislation.
 - 6.2 Rape is prevalent in the community and the country. It is all over the media and the prevalence of the offence is undeniable.
 - 6.3 The offence has caused distrust within the community as the perpetrators live amongst the community. The Appellant knew the complainant, yet he did not care for her or her safety.
 - 6.4 The Appellant has a long list of various previous convictions ranging from housebreaking to possession of a dangerous weapon, and violent assault which sheds light on the Appellant's character and demonstrates that he is a repeat offender who does not shy away from violent criminal behaviour.
 - 6.5 The Appellant committed rape and kidnapping whilst on parole.
 - 6.6 The complainant has difficulty walking alone in the streets, cannot sleep at night and has anger problems as a result of the offences committed against her by the Appellant.
 - 6.7 The complainant has been deeply affected by the offences committed against her and has led her to distrust and fear of male persons.
 - 6.8 The Appellant has already been declared unfit to possess a firearm on account of his previous convictions.

- 7 The trial court then considered, *inter alia*, the purposes of sentencing and concluded that there are substantial and compelling circumstances which allow the court to deviate from the prescribed minimum sentence of 10 years imprisonment. The court went on further to state the following: *"In your case you are not a first offender. In other words, I have got a right to increase 10 to more than 10 [years]. And the previous records are similar to [the] offence which you have committed of violence."*
- 8 The trial court proceeded to sentence the Appellant to 15 years imprisonment for rape and to 5 years imprisonment for kidnapping, for which the Appellant shall serve the sentences consecutively, in terms of section 280(2) of the Criminal Procedure Act, Act 51 of 1977. The trial court also (and notwithstanding the previous declaration which was already made in this regard) declared the Appellant unfit to possess a firearm under section 103(1) of the Firearm Control Act, Act 60 of 2000. This declaration seems superfluous as the Appellant has already been declared unfit to possess a firearm in terms of a prior sentence measured out to the Appellant.

THE APPEAL

- 9 The Appellant appeals both the conviction and sentence imposed by the trial court, wherein he seeks for both to be set aside and for the sentence (should the conviction be upheld by this court of appeal) to be replaced by a sentence of 10 years imprisonment. The Respondent did not oppose the appeal.
- 10 The Appellant requested for this appeal to be decided on the papers,

without hearing oral argument, in terms of section 19(a) of the Superior Courts Act, Act 10 of 2013.

APPEAL AGAINST CONVICTION

11 In the heads of argument, the Appellant only mentions one ground of appeal against the conviction, which is that the court a quo's questioning of the witnesses was not to seek clarity and as a result, were bias. The other two grounds of appeal have not been mentioned nor has the Appellant's legal representative provided an explanation why the grounds have not been considered. Be that as it may, I shall consider those grounds of appeal as well.

General legal principles to appeal on conviction

12 A court of appeal must always observe these established principles in the adjudication of an appeal on conviction:

12.1 In the matter of ***R v Dhlumayo and Another*** 1948 (2) 677 at 705, the Appeal Court stated: *"The trial court has the advantage, which the appeal judges do not have, in seeing and hearing the witness being steeped in the atmosphere of the trial. Not only has the trial court the opportunity of observing the demeanor, but also their appearances and whole personality. This should not be overlooked"*.

12.2 The Constitutional Court in ***Makate v Vodacom (Pty) Ltd*** 2016 (4) SA 121 CC, reaffirmed the principles outlined in ***Dhlumayo***: *"Not having seen the witnesses puts the appellant judges in a permanent position of disadvantage against the trial judges, and,*

unless it can be shown that he has failed to use or has palpably misused his advantage, the Higher Court ought not to take the responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case
responsibility of reversing conclusions so arrived at, merely on the result of their own comparisons and criticisms of the witnesses and of their own view of the probabilities of the case”.

- 12.3 A court of appeal can only reject the trial court’s assessment of the evidence if the court of appeal is convinced that the trial court’s assessment of the evidence is wrong. If the appeal court is in doubt, the trial court’s judgment must remain in place (**S v Robinson** 1968 (1) SA 666 (A) at 675H).
- 12.4 In the matter of **S v Moyane and Others** 2001 (1) SACR 543 (SCA) at para 15, Ponnann JA confirmed the powers of the appeal court: *“This court’s powers to interfere on appeal with the findings of fact of a trial court are limited... In the absence of demonstrable and material misdirection by the trial court, its findings of fact are presumed to be correct and will only be disregarded if the recorded evidence shows them to be clearly wrong (S v Hadebe and Others 1997 (2) SACR 641 (SCA) at 645 e-f).”*

First and Second Grounds of Appeal

- 13 The first ground of appeal is that the trial court is alleged to have

- misdirected itself by finding that the state has proved its case beyond reasonable doubt. The second ground is that the trial court ignored contradictions in the evidence of the state witnesses which were material.
- 14 In order for this appeal court to interfere with the decision of the trial court, there would have to have been a misdirection, where the trial court erred on matters of fact or failed to give due weight to factors which should have been considered.

Analysis

- 15 It is established that in a criminal trial, the State bears the onus to prove the guilt of an accused beyond reasonable doubt. There is no onus on the part of an accused to prove his or her innocence or convince the court of the truthfulness of any explanation that he or she gives (**S v Jochems** 1991 (1) SACR (A) at 211E-G). In addition, if the Appellant's version might be reasonably true, he or she would be entitled to an acquittal (**Shackle v S** 2001 (1) SACR 279 (SCA) at 288E-F).
- 16 An accused's version can only be rejected once the court has found that on credible evidence, it is false beyond reasonable doubt. In **S v Chabalala**, the SCA stated the approach to be adopted as follows: *"The correct approach is to weigh up all the elements which points towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt to the accused's*

guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as failure to call a material witness concerning an identity parade) was decisive but that can only be on an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch onto one (apparently) obvious aspect without assessing it in the context of the full picture in evidence.”

- 17 The court *a quo in casu* detailed the complainant’s testimony and the state witnesses’ testimonies. The DNA results and evidence confirmed that the Appellant is linked to the offence. The trial court also dealt with the Appellant’s version of events, which is that he and the complainant were in a relationship and the sex was consensual. The trial court also considered the contents of the Appellant’s affidavit submitted during the Appellant’s bail hearing, which contradicted his testimony in many respects, except the part that he and the complainant were in a relationship.
- 18 The trial court found the Appellant guilty after determining that though the state witnesses’ testimonies had some contradictions, the contradictions were not material enough to result in the rejection of the testimony of the state witnesses.
- 19 This Court agrees with the trial court’s findings. A thorough consideration of the judgment and transcripts shows that the contradictions in the testimonies of the state witnesses are not material to the charges or the primary issues in the matter. The Appellant’s connection to the rape charge is supported by the DNA results – although the Appellant never

disputed having intercourse with the complainant – but rather the defence that the intercourse was consensual. The complainant's testimony was not disproved in cross examination. The Appellant's version, that he and the complainant were in a relationship and that the intercourse was consensual, was in the view of this Court correctly rejected by the trial court as not being reasonably possibly true.

- 20 As a result, this Court is of the opinion that the trial court did not misdirect itself by finding that the State has proved its case beyond reasonable doubt and, that the first and second grounds of appeal against the conviction stand to be dismissed.

Third ground of appeal

- 21 This ground of appeal deals with the contention that in asking questions to the witnesses the presiding officer overstepped the role and function of impartial adjudicator and descended into the proverbial arena.
- 22 Prior to examining the trial court's conduct (and the accusations levied against same), it is incisive to have regard to the conduct that is expected of a presiding officer.
- 23 A presiding officer is entitled and obliged in the interests of justice to put additional questions to the witnesses, including the accused, as seem to him desirable in order to elicit or elucidate the truth more fully in respect of relevant aspects of the case (see Wigmore on Evidence 3rd ed vol 3 para 784 at 151-2).
- 24 The main purpose of questioning conducted by a presiding officer should be to clear up any points which are still obscure. The court should play

a limited role in this regard (see Schwikkard, Principles of Evidence 3rd ed para 18 9 at 374). In **S v May** 2005 (10) BCLR 944 (SCA) Lewis JA held: *“The trial must be so conducted that the judicial officer’s ‘open-mindedness, his impartiality and his fairness are manifest to all those who are concerned in the trial and its outcome, especially the accused’. The Judge should consequently refrain from questioning any witnesses or the accused in a way that, because of its frequency, length, timing, form, tone, contents or otherwise, conveys or is likely to convey the opposite impression. A Judge should also refrain from indulging in questioning witnesses or the accused in such a way or to such an extent that it may preclude him from detachedly or objectively appreciating and adjudicating upon the issues being fought out before him by the litigants. As Lord Greene MR observed in Yuill v Yuill (1945) 1 All ER 183 (CA) at 189B, if he does indulge in such questioning– ‘he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of the conflict. Unconsciously, he deprives himself of the advantage of calm and dispassionate observation.’”*

- 25 Though, in criminal cases a judge has more latitude to intervene to see that justice is done and the truth is ascertained, as was held by Nicholson J in **S v Mseleku** 2006 2 SACR 237 (N): *“... in criminal proceedings the court will, if it is necessary in order that justice be done, come to the aid of the accused who is represented by inexperienced counsel ... The corollary of this would seem to be that the inexperienced counsel for the State should be assisted also.”*

26 In **S v Leepile** (CA 34/2015) [2016] ZANWHC 1; 2016 (1) SACR 513 (NWM) (11 February 2016) at paragraph [18], the court summarised the conduct that is expected of a presiding officer as follows: *"Although a presiding officer is sometimes obliged to ask witnesses questions, it is important to guard against conduct which could create the impression that he or she was descending into the arena of conflict or that he or she was partisan or had pre-decided issues which should only be decided at the end of the trial. Nor should a presiding officer put attacking propositions to an accused. Such conduct can create the impression that the presiding officer is acting as a cross-examiner, associating himself with the state's case against the accused. See S v Maseko 1990 (1) SACR 107A at 118 c-f and S v Mafa and Others [2008] ZAGPHC 38; 2008 (2) SACR 653 W ([2008] 2 All SA657) at para 37. The presiding officer should also guard against personal opinion and views. See also S v Mabuza 1991 (1) SACR 636 (0)."*

27 The above quoted authorities clearly set out the legal position in this regard and requires no further discussion. The position is trite. The question is whether the trial court's conduct affected the Appellant's right to a fair trial to such a degree that it cannot in principle be said that justice was done.

The Appellant's Case

28 The Appellant's argument regarding the trial court's conduct is described in the heads of argument as follows: *"The learned Regional Court Magistrate Mr Mtebele descended into the arena during trial and his*

questioning of witnesses was disguised as questions of clarity but in reality, they were not, the court at one point took the leading of evidence over from the prosecutor and led the witness to identify the appellant. That did not constitute clarity seeking question but bias on the side of the court."

- 29 The Appellant bases his contention on pages 11 and 32 to 36 of the transcribed record. I only quote the transcription on page 11, as the Appellant only refers to this page in the heads of argument. It is the evidence in chief between the complainant and the Prosecutor:

"ME T [REDACTED] *In the morning, I heard them waking each other up on the other side and they left.*

PROSECUTOR: *Why did you not ask for assistance or help from these friends of his.*

ME T [REDACTED] *I was afraid because all of them smoked drugs and they were under the influence of drugs.*

COURT: *So they were smoking drugs?*

ME T [REDACTED] *Yes they were using bottles.*

PROSECUTOR: *He left the [intervened]*

COURT: *Who is this person?*

ME T [REDACTED] *Papa Dlamini.*

COURT: *Where is he, where is he?*

ME T [REDACTED] *Here he is.*

COURT: *So woke up in the morning what happened?*

ME T [REDACTED]: He left and the people remained behind Papa Dlamini as well as his other friend.

COURT: Yes and then.

ME T [REDACTED]: Thereafter someone knocked on the door I heard Ntokolo's voice and he asked him the lady that you took from me yesterday where is she.

COURT: What time was it now?

ME T [REDACTED]: I think it might have been past six in the morning Your Worship.

COURT: Mm."

- 30 Upon considering the above and the other pages highlighted in the heads of argument, this Court is of the view that the trial court did not conduct itself in a biased, unfair or discourteous manner. The Appellant's right to a fair trial was not affected by the actions of the presiding officer.
- 31 The trial court asked questions in order to gain clarity on the evidence being adduced, as it is entitled to do so for justice to be done.
- 32 Accordingly, the third ground of appeal against the conviction of the Appellant stands to be dismissed as well.

APPEAL AGAINST SENTENCE

- 33 The approach to an appeal against sentence was set out in ***S v Malgas*** 2001 (2) SA 1222 (SCA) at paragraph 12 as follows:
"The mental process in which courts engage when considering questions of sentence depends upon the task at hand. Subject of course to any limitations imposed by legislation or binding judicial precedent,

a trial court will consider the particular circumstances of the case in the light of the well-known triad of factors relevant to sentence and impose what it considers to be a just and appropriate sentence. A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate court is at large. However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate". It must be emphasised that in the latter situation the appellate court is not at large in the sense in which it is at large in the former. In the latter situation it may not substitute the sentence which it thinks appropriate merely because it does not accord with the sentence imposed by the trial court or because it prefers it to that sentence. It may do so only where the difference is so substantial that it

attracts epithets of the kind I have mentioned. No such limitation exists in the former situation.”

- 34 The above judgment was mentioned with approval in ***Bailey v The State*** (454/11) [2012] ZASCA 154 at paras 20 and 21, the Supreme Court of Appeal in a unanimous judgment, stated the following: *“What then is the correct approach by an appellate court on appeal against a sentence imposed in terms of the Act? Can the appellate court interfere with such a sentence imposed by the trial court after exercising its discretion properly simply because it is not the sentence which it would have imposed or that it finds it shocking? The approach to an appeal on sentence imposed in terms of the Act, should in my view, be different to an approach to other sentences imposed under the ordinary sentencing regime. This in my view is so because the minimum sentences to be imposed are ordained by the Act. They cannot be departed from lightly or for flimsy reasons. It follows therefore that a proper enquiry on appeal is whether the facts which were considered by the sentencing court are substantial and compelling or not.*

*The most difficult question to answer is always: what are substantial and compelling circumstances? The term is so elastic that it can accommodate even the ordinary mitigating circumstances. All I am prepared to say is that it involves a value judgment on the part the sentencing court. I have, however, found the following definition in *S v Malgas* (above) para 22 to be both illuminating and helpful: ‘The greater the sense of unease a court feels about the imposition of a*

prescribed sentence, the greater its anxiety will be that it may be perpetrating an injustice. Once a court reaches the point where unease has hastened into a conviction that an injustice will be done, that can only be because it is satisfied that the circumstances of the particular case render the prescribed sentence unjust, or as some might prefer to put it, disproportionate to the crime, the criminal and the legitimate needs of society. If it is the result of a consideration of circumstances the court is entitled to characterise them as substantial and compelling and such as to justify the imposition of a lesser sentence.”

- 35 Having regard to the above-mentioned principles, another principle which finds application in this appeal is the issue of the cumulative effect of the two terms of the sentences imposed by the trial court running consecutively and not concurrently. The court in the matter of **Alberto v S** (A 72/2022) [2023] ZAGPPHC 162 (9 March 2023) dealt with what is referred to as the “*cumulative effect*” of sentences which do not run concurrently, but consecutively.
- 36 The default position in terms of section 280(2) of the Criminal Procedure Act, Act 51 of 1977 is that sentences run consecutively unless the court orders the sentences to run concurrently.
- 37 In this matter the court *a quo* ordered that the Appellant’s respective sentences of 10 years and 5 years imprisonment run consecutively and not concurrently. As such, it is important in this appeal (in respect of sentence) to have regard to the “cumulative effect” and thus the “end result” of the two sentences running consecutively, i.e., a total of 20 years

imprisonment.

38 The court in the *Alberto v S* matter stated the following in respect of the “cumulative effect”:

[3] When, as in this case, separate sentences are imposed for multiple offences, “an accumulation of the severity of the sum of all these sentences rapidly develops. In our law, this is described as the ‘cumulative effect’ of sentences”.

[4] As a consequence, a sentencing court has to be aware of the extent of such a cumulative effect. Where the sentences were for imprisonment, a court then has an obligation to consider whether the accumulative period of imprisonment is appropriate, given all the circumstances of the case or whether the “... aggregate penalty is not too severe”.

[5] In considering the severity, a court should have regard to the totality of the offender’s criminal conduct or behavior.

[6] Should the aggregate period of imprisonment be deemed to be too severe, a court should take “such measures as are required” to determine an appropriate sentence.

[7] Should a sentencing court fail to properly take the cumulative effect into account, it shall have committed a misdirection. Similarly, should the eventual aggregate sentence be too severe or out of proportion to what is deserved by an offender, a court of appeal shall be entitled to intervene.”

Consideration of Grounds of Appeal

39 It falls to this Court on appeal to consider whether the facts considered

by the trial court were substantial and compelling or not, and whether the sentence imposed was, in the circumstances, unjust or disproportionate to the crime. Finally, this court must also consider the cumulative effect of the two sentences imposed by the trial court running consecutively and not concurrently and whether the “...*aggregate sentence [is] too severe or out of proportion to what is deserved by an offender.*”

40 The grounds given by the Appellant in mitigation and alleged to be constituting substantial and compelling circumstances, are: personal circumstances; that the seriousness of the offence was over-emphasised; that the prescribed minimum sentence was deviated from without the trial court providing reasons; and that the Appellant cannot be rehabilitated with a 20-year sentence.

41 The Appellant's personal circumstances as argued, were found to be not substantial, nor compelling. The Appellant has not argued anything compelling about his age, good health and minor child. A scrutiny of the record containing the trial court's reasoning in dealing with this issue in the sentencing proceedings enjoins this court not to interfere with the manner in which the trial conducted itself.

42 Rape is a violent and unfortunately prevalent offence. It is also a serious offence and is categorised as such by the applicable legislation. In terms of the provisions of section 51 of the Criminal Law Amendment Act, Act 105 of 1997 this offence carries a prescribed minimum sentence depending upon the circumstances under which the offence was committed and certain attributes of the offender. In this instance a

minimum sentence of ten years imprisonment finds application for the offence of rape committed by the Appellant.

- 43 The trial court comprehensively deals with the application of the provisions of the Criminal Law Amendment Act, Act 105 of 1997 and more over the fact that the Appellant was not a first offender and as a result, the trial court may deviate from the minimum sentence and increase the minimum prescribed sentence – which the trial in fact elected to do *in casu*. In explaining its reasons for deviating, the trial court states that the Appellant's prior convictions were *inter alia* for violent offences, of which the two counts he was accused and recently convicted of were violent acts.
- 44 The trial court imposed a sentence, in which the prescribed minimum sentence for rape was deviated from, in terms of section 51(2)(a)(ii). In this regard, this Court shares the view of the trial court to the effect that rape is a violent offence and its seriousness and consequences it has on the complainant and community at large, cannot be over-emphasised or overshadowed by the Appellant's personal circumstances.
- 45 All considered the sentence imposed by the trial court in respect of the rape conviction by the trial court, i.e. 15 years imprisonment stands to be left undisturbed by this court of appeal.
- 46 The sentence of five years imprisonment levied out by the trial court upon the conviction of the Appellant for the kidnapping of the complainant can also not be regarded as shockingly inappropriate. It is measured and fair under the circumstances of the matter. Again, it is the previous

convictions of the Appellant and the tendency to violent criminal acts which sways the scales of justice to rendering this sentence appropriate and fair under the circumstances.

- 47 The Appellant's prior convictions demonstrate that the Appellant has a history of violent criminal behaviour. If anything, these violent criminal tendencies of the Appellant paint a dark picture and require the protection of the community against the Appellant. This is what the trial court did by imposing a substantive term of incarceration.
- 48 Accordingly, this Court stands unpersuaded by the Appellant's contentions raised in his grounds of appeal against sentence.

CONCLUSION AND JUDGMENT

- 49 In the premise the following order is hereby made:
- a. The appeal against the conviction and sentence is dismissed.
 - b. The Appellant's sentence of 20-year imprisonment imposed by the trial court for rape and kidnaping, as well as the consequential order made by the trial court declaring in terms of section 103(1) of the Firearm Control Act, Act 60 of 2000 that the Appellant is unfit to possess a firearm (albeit one of tautology if one has regard to prior sentences passed against the Appellant), are confirmed.

DATED AT SANDTON ON THIS 30TH DAY OF JUNE 2025


B MORRIS
ACTING JUDGE OF THE HIGH COURT,

NORTH-WEST DIVISION, MAHIKENG

I AGREE



R.P.

N G LAUBSCHER

**ACTING JUDGE OF THE HIGH COURT,
NORTH-WEST DIVISION, MAHIKENG**

For the Appellant: Mr RK Thuwe

For the Respondent: No appearance

Date of Hearing: Adjudicated on the record and heads of argument

Date of Judgment: 30 June 2025